

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	MDL No. 2002
<hr style="width: 50%; margin-left: 0;"/>	:	08-md-02002
	:	
THIS DOCUMENT APPLIES TO:	:	
All Direct Purchaser Actions	:	

**DIRECT PURCHASER PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) move the Court to finally approve the settlement between Plaintiffs and defendant Sparboe Farms, Inc. (“Sparboe”) on the terms and conditions set forth in the Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc. (“Settlement” or “Settlement Agreement”) and to certify the class for the purpose of settlement. This Motion is based upon Plaintiffs’ Memorandum of Law in Support, Declaration of Michael D. Hausfeld and the Declaration of Jennifer M. Keough submitted herewith, and is made on the following grounds:

(1) The settlement is entitled to a presumption of fairness because the settlement negotiations were undertaken at arm’s-length over a four-month period, by experienced antitrust counsel who entered the negotiations with sufficient background in the facts of the case, and no members of the class objected. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)

(2) The settlement is fair, reasonable and adequate based upon satisfaction of the nine factors set forth in *Girsh v. Jepsen*, 521 F.2d 153, 156 (3d Cir. 1975). Specifically, the settlement is fair, reasonable and adequate given the complexity, expense, and likely duration of the litigation, the stage of proceedings and the costs and risks involved in the litigation for

Plaintiffs absent Sparboe's cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is greatly enhanced by Sparboe's cooperation and the reaction of the class has been overwhelmingly positive, with no objections to the settlement received.

(3) As set out in the Court's Court's October 23, 2009 Order (Dkt. No. 214), the Settlement Class, as defined in the Settlement Agreement, meets the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3).

WHEREFORE, Plaintiffs respectfully request that the Court grant the motion and enter the [Proposed] Order Granting Final Approval of Proposed Settlement with Sparboe Farms, Inc., filed as an exhibit to Plaintiffs' Memorandum of Law in Support of this Motion.

Dated: December 14, 2010

Respectfully submitted,

/s/ Steven A. Asher

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THIS DOCUMENT APPLIES TO: :
All Direct Purchaser Actions :

**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE SETTLEMENT
AGREEMENT WITH SPARBOE FARMS, INC.**

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ARGUMENT

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) hereby move for an Order granting final approval of the settlement reached between Plaintiffs and Defendant Sparboe Farms, Inc. (“Sparboe”). The settlement terms are memorialized in the Settlement Agreement between Plaintiffs and Sparboe Farms, Inc. entered into on June 8, 2009 and preliminarily approved by the Court on October 23, 2009. The Settlement Agreement provides for the resolution of the claims of Plaintiffs against Sparboe in exchange for cooperation in the continued litigation against the remaining Defendants. As will be demonstrated herein, the substantial cooperation received from Sparboe has caused nine Defendants to answer Plaintiffs’ Second Consolidated Amended Complaint rather than filing motions to dismiss; has enabled Plaintiffs to settle for a substantial sum with Defendants Land O’ Lakes, Inc., Moark LLC, and Norco Ranch, Inc. (collectively, the “Moark Defendants”), and, more generally, is crucial to the continued prosecution of this action. Thus, the settlement should be approved pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

II. BACKGROUND

A. The Litigation

The operative complaint in this action is the Second Consolidated Amended Class Action Complaint (“Complaint”), filed on April 7, 2010 (Dkt. No. 291). The Complaint alleges that Defendants, including Sparboe, violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce output and artificially fix and/or inflate the price of eggs in the United States. As a result of Defendants’ alleged conduct, the prices paid to Defendants by Plaintiffs and members of the putative class for shell eggs and egg products were

higher than they otherwise would have been. The lawsuit seeks injunctive relief, treble damages, attorneys' fees and costs from Defendants.

As a result of Sparboe's significant cooperation, Plaintiffs were able to file the now-operative Complaint, unprecedented in size and detail, explaining, in over 500 paragraphs and 140 pages, the intricate workings of Defendants' conspiracy, as well as the statements made, meetings held and actions taken in furtherance thereof. As a result of these highly detailed allegations, nine Defendants chose to answer the complaint rather than move to dismiss.¹ Furthermore, Plaintiffs were able to reach a substantial settlement with the Moark Defendants shortly after the filing of the Complaint.

B. The Settlement Negotiations

Interim Co-Lead Counsel ("Interim Counsel") and Sparboe's counsel, Stoel Rives LLP, began settlement negotiations in March 2009. The scope of the settlement negotiations is described in the Hausfeld Declaration ("Hausfeld Decl."), submitted concurrently herewith as Exhibit A. Interim Co-Lead Counsel ("Interim Counsel") and Sparboe's counsel, who are highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations. The settlement negotiations spanned several months and included numerous telephone conferences and four in-person meetings. *See* Hausfeld Decl. ¶¶ 7-13.

On March 26, 2009, Sparboe made an initial attorney proffer to Interim Counsel in Washington, D.C. regarding what Sparboe's information would show and how it would assist Plaintiffs' in the prosecution of their case. Hausfeld Decl. ¶ 9. On April 23, 2009, Sparboe proffered both hundreds of pages of documents and live witness testimony from Sparboe employee, Wayne Carlson. *Id.* at ¶ 10. Thereafter, Interim Counsel engaged in several

¹ Under the complaint filed prior to Sparboe's cooperation, these same Defendants had moved to dismiss.

additional telephone conferences with Sparboe's counsel regarding the cooperation that Sparboe could provide. *Id.* at ¶ 11. On May 26, 2009, Sparboe then made a third attorney proffer, by providing hundreds of pages of additional documents, as well as identifying several executives and current and former Sparboe employees who could offer testimony in the case to corroborate the information contained in the documents, and provide additional information. *Id.* at ¶ 12. Finally, on June 3, 2009, Sparboe made a fourth attorney proffer of documents and proffered additional descriptions of expected witness testimony. *Id.* at ¶ 13.

Interim Counsel became convinced that the cooperation provided by Sparboe before the commencement of discovery, including production of documents and access to witnesses, would provide additional material in support of Plaintiffs' allegations as stated in the First Consolidated Amended Complaint. Based on the totality of the information supplied by Sparboe, Interim Counsel determined that Sparboe's cooperation would significantly enhance and strengthen the claims against the remaining Defendants. Moreover, Interim Counsel determined that the assistance provided by Sparboe would far outweigh the continued participation by Sparboe as a Defendant. Accordingly, Interim Counsel determined that it was in the Plaintiffs' and the Class's best interests to obtain the assurance of prompt and significant cooperation from Sparboe to assist in the prosecution of this case against the remaining Defendants, particularly where the opportunity to secure the benefit of such cooperation may have been lost without obtaining any greater benefit for Plaintiffs.

Ultimately, the parties drafted and circulated a settlement agreement after extensive negotiation. On June 8, 2009, the Settlement Agreement was fully executed by Interim Counsel and Sparboe's counsel.

C. Provisions of the Settlement Agreement

1. The Settlement Class

The Settlement Agreement defines the Settlement Class as follows:

All persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Shell Eggs Subclass

All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Egg Products Subclass

All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the Class and Subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

Settlement Agreement, ¶ 11 (Hausfeld Decl., Ex. 1).

2. Release Provisions in the Settlement Agreement

In exchange for the consideration provided by Sparboe, Plaintiffs have agreed to release Sparboe from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. The full text of the proposed release, including the limitations thereof, is set forth in the Settlement Agreement, ¶¶ 17-19 (Hausfeld Decl., Ex. 1).

3. Cooperation Provision in the Settlement Agreement

As provided in the Settlement Agreement, Sparboe agreed to produce documents related to Plaintiffs' allegations in the Complaint; to make witnesses available for informal interviews

before the start of formal discovery; and, if necessary, to testify at depositions and trial.

Settlement Agreement, ¶ 23 (Hausfeld Decl., Ex. 1). Under the cooperation provision, important information and witnesses that bolster Plaintiffs' claims against the remaining Defendants and possibly others have been made available to Plaintiffs without the time and expense involved in pursuing formal discovery, and sooner than would be possible under the current scheduling orders of the Court and the stay of discovery.

In fact, immediately after executing the Settlement Agreement, Sparboe's counsel provided a first round of additional documents to Interim Counsel that substantiate the allegations contained in the First Consolidated Amended Complaint. Beginning the week of June 9, 2009, Sparboe began to produce additional documents for review by Interim Counsel relevant to this litigation. Hausfeld Decl. ¶ 16. In addition, over the course of the following months, Sparboe made a number of witnesses available who provided first-hand testimony concerning the existence of a conspiracy. *Id.* at ¶ 17.

The documents and witnesses produced by Sparboe enabled Plaintiffs to file their now-operative Complaint. Moreover, since the Settlement Agreement was preliminarily approved, Interim Counsel and counsel for Sparboe have been working towards the production of additional documents and witnesses.² It is expected that Sparboe's cooperation will continue long after the Court finally approves the Settlement Agreement and that it will be instrumental in the continuing prosecution of this action against remaining Defendants.

D. Preliminary Approval Granted and Class Certified for Settlement Purposes

On October 23, 2009, this Court preliminarily approved the settlement, preliminarily certified the class for settlement purposes and authorized Interim Counsel to disseminate mail

² This production has been delayed by the ongoing privilege disputes in this action raised by Defendant United Egg Producers ("UEP").

and publication notice of the proposed settlement to Class Members (Dkt. No. 214). A final fairness hearing is scheduled for January 13, 2011 (Dkt No. 388).

E. Notice of the Settlement

As explained further in the December 14, 2010 Declaration of Jennifer M. Keough (“Keough Decl.”), submitted concurrently herewith as Exhibit B, on September 2, 2010, Garden City Group, LLC (“Garden City”), the Settlement Claims administrator retained by Interim Counsel, mailed the Settlement Notice approved by the Court to approximately 13,211 direct purchasers of eggs, identified using the sales data produced by Defendants. Garden City also arranged for the Summary Notice approved by the Court to be published in the following industry journals: *Restaurant Business* (September 2010 issue), *Convenience Store News* (September 2010 issue), *Hotel F&B* (September/October 2010 issue), *Nation’s Restaurant News* (September 2010 issue), *Food Service Director* (September 2010 issue), *Progressive Grocer* (September 2010 issue), *Food Manufacturing* (September 2010 issue), *Supermarket News* (September 6, 2010 issue), *Stores*, *Egg Industry Magazine* (September 2010 issue), *Baking Buyer* (September 2010 issue), *Modern Baking* (October 2010 issue), *Food Processing* (September 2010 issue), *Long Term Living* (September 2010 issue), and *Pet Food Industry* (September 2010 issue). Keough Decl. at ¶ 10. Moreover, Garden City arranged for publication on September 13, 2010 of the Summary Notice in the *Wall Street Journal*. *Id.* Combined, these publications have a circulation of over 2,316,000. *Id.*

In addition, Garden City arranged for the issuance of a press release through PR Newswire, a service which distributes news to reach mainstream outlets, over 78 categories of industry trade media, more than 4,900 Web sites and PR Newswire for Journalists, a digital media channel serving more than 85,000 registered journalists globally. *Id.* at ¶ 12. Garden City

also created a dedicated website and a toll-free telephone helpline through which class members can obtain information concerning the Sparboe Settlement.

The Court-approved notices advised potential Settlement Class members of the material terms of the proposed settlement with Sparboe, the scope of the Sparboe Settlement Class, the scope of the release provided for in the settlement, and that any objections to or exclusions from the settlement should be postmarked on or before November 16, 2010. *Id.* at ¶ 16. Garden City received no objections to the settlement and 364 requests for exclusion. *Id.*

Sparboe has yet to provide its notice of the proposed settlement to the appropriate State and Federal officials consistent its obligations under the Class Action Fairness Act, 18 U.S.C. § 1711 *et seq.* (“CAFA”), though it is in the process of doing so.³ However, in instances such as this, courts have used their discretion to structure the timing of their final approval orders to excuse a failure to timely provide CAFA notice. *See e.g. D.S. ex rel. S.S. v. New York City Dept. of Educ.*, No. 05 Civ. 4787, 2008 WL 4911874, at *2 (E.D.N.Y. Nov. 14, 2008); *D.S. ex rel. S.S. v. New York City Dep’t. of Educ.*, 255 F.R.D. 59, 79 (E.D.N.Y. 2008) (holding the fairness hearing and finally approving briefing prior to CAFA notice being issued and providing that the order would not become final until the defendant had submitted CAFA notice, 90 days had elapsed, and no relevant authority had objected or requested a hearing); *Kay Co. v. Equitable Production Co.*, No. 06 Civ. 00612, 2010 WL 1734869, at *4 (S.D. W.Va. Apr. 28, 2010) (the Court received final approval briefing and held a fairness hearing and simply waited to submit the final approval order once the 90-day period had elapsed). Plaintiffs respectfully suggest that

³ CAFA requires settling defendants to serve notice of a proposed settlement on the “appropriate” State and Federal officials after a proposed class action settlement is filed with court. 28 U.S.C. § 1715(b). CAFA also provides a 90-day window following service of such notice within which the noticed officials may review the settlement before a court may grant approval of the settlement. *Id.*

this Court hold its Order of Final Approval in abeyance contingent on Sparboe issuing CAFA notice and, thereafter, 90 days elapsing without any objections or requests for hearings being received from any relevant authority. If any authorities seek to be heard or object to the settlement, the parties will respond accordingly.

III. THE CIRCUMSTANCES UNDERLYING THE COURT’S PRELIMINARY CERTIFICATION OF A CLASS FOR SETTLEMENT PURPOSES HAVE NOT CHANGED

Plaintiffs incorporate by reference the arguments made in support of certification of the settlement class pursuant to their Motion for Preliminary Approval of the Class Action Settlement between Plaintiffs and Sparboe Farms Inc. and Preliminary Certification of Class Action for the Purposes of Settlement (Dkt. No. 171). *See, e.g.*, Memorandum of Law in Support of Motion for Preliminary Approval of the Class Action Settlement between Plaintiffs and Sparboe Farms Inc. and Preliminary Certification of Class Action for the Purposes of Settlement, Dkt. No. 172, at 18-28. For the reasons discussed therein, as well as in the Court’s Order preliminary certifying the class and approving the settlement, the Class should be certified for settlement purposes only.

In its October 23, 2009 Order, the Court noted that “when deciding preliminary approval, a court does not conduct a definitive proceeding on fairness of the proposed settlement . . . That determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement is assessed.” Dkt. No. 214 at 5, n. 6 (internal quotations and citations omitted). Moreover, the Court, after detailed examination of the factors necessary to determine whether a class may be certified for settlement purposes, held that, “for the sole purpose of settlement, and without an adjudication on the merits, the Settlement Class is sufficiently well-defined and cohesive to merit preliminary approval.” *Id.* at 8. Nothing has since arisen that could serve to disturb that decision or the considerations underlying it. Thus, the sole remaining consideration

to be assessed prior to final approval of the Sparboe settlement is whether the settlement is fair, reasonable and adequate.

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE FINALLY APPROVED

Court approval is required for settlement of a class action. Fed. R. Civ. P. 23(e). The United States Supreme Court has identified the “important principle that settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.” *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 401 (1977) (internal quotation marks, citations, and alterations omitted). Similarly, the Third Circuit has observed that “there is an overriding public interest in settling class action litigation, and it should therefore be encouraged.” *In re Warfarin Sodium Antitrust Litig.* 391 F.3d 516, 535 (3d Cir. 2004). Class action settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (“[T]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”); *Austin v. Pa. Dep’t of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (“[T]he extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy encouraging settlements to an overriding public interest.”) (internal quotations omitted). As explained further below, these considerations indicate that final approval is appropriate here.

A. The Settlement is Entitled to a Presumption of Fairness

A settlement should be approved in accordance with Rule 23(e) of the Federal Rules of Civil Procedure where it is “fair, reasonable and adequate.” *See In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F. 3d 283, 316 (3d Cir. 1998); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d

115, 118 (3d Cir. 1990); *Walsh v. Great Atl. & Pa. Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983). While District Courts are afforded “wide discretion” when making this determination, *see Girsh v. Jepsen*, 521 F.2d 153, 156 (3d Cir. 1975); *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978), the Third Circuit has consistently held that they should neither rewrite the agreement reached by the parties nor try the case by resolving merits issues left unresolved by the settlement agreement. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1315 (3d Cir. 1993) (“The temptation to convert a settlement hearing into a full trial on the merits must be resisted.”); *Bryan Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3d Cir. 1974) (“To require a fuller statement of the court’s views would turn a decision on approval of a proposed settlement into a determination on the merits in all but name.”). Rather, recognizing that a settlement represents an exercise of judgement on behalf of the parties, the Third Circuit has held that courts should apply an initial presumption of fairness when reviewing a proposed settlement where “(1) the settlement negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001); *see also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (“A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery”) (citing *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)); *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving “due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arm’s length and in good faith”).

The Settlement Agreement was (1) entered into only after several months of intense arm’s length negotiations; (2) by experienced and capable antitrust lawyers on both sides,

including those designated by this Court to serve as Interim Counsel; (3) after Interim Counsel had conducted its own in-depth and far-reaching investigation; and (4) no objections have been received.

In particular, “significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.” *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 731 (E.D. Pa. 1995); *see also Spring Garden United Neighbors, Inc. v. City of Philadelphia*, No. 83-3209, 1986 WL 1525, at * 3 (E.D. Pa. Feb. 4, 1986) (“[T]he professional judgment of counsel involved in the litigation is entitled to significant weight”); *In re Am. Family Enter.*, 256 B.R. 377, 421 (D.N.J. 2000) (“In determining the fairness, adequacy, and reasonableness of a proposed settlement, significant weight should also be given to the belief of experienced counsel that settlement is in the best interest of the class, so long as the Court is satisfied that the settlement is the product of good faith, arms-length negotiations.”) (internal quotations omitted); *Austin*, 876 F. Supp. at 1457 (“[C]ourts have accorded significant weight to the view of experienced counsel who have engaged in arm’s-length negotiations”); *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 68 (S.D.N.Y. 1993) (“Experienced counsel’s opinions are entitled to substantial weight by the Court in determining whether to approve [a] settlement.”).

Here, Interim Counsel and counsel for Sparboe are highly experienced practitioners in complex litigation, and antitrust class actions in particular. They engaged in four months of arm’s-length negotiations, *see* Hausfeld Decl. ¶¶ 7-13, and reached a settlement which fundamentally altered the face of the litigation against remaining Defendants, which did not receive a single objection from the class, and which has already helped lead to a monetary settlement with the Moark Defendants. As such, the settlement should be accorded a presumption of fairness.

B. The *Girsh* Factors Strongly Support Approval

The Third Circuit has “identified nine factors to be considered when determining whether a proposed class action settlement is fair, reasonable and adequate.” *Warfarin Sodium*, 391 F. 3d at 534. These factors, referred to as the *Girsh* factors, are:

- (1) The complexity, expense, and likely duration of the litigation;
- (2) The reaction of the class to the settlement;
- (3) The stage of the proceedings and the amount of discovery completed;
- (4) The risks of establishing liability;
- (5) The risks of establishing damages;
- (6) The risks of maintaining the class action through trial;
- (7) The ability of the defendants to withstand a greater judgment;
- (8) The range of reasonableness of the settlement in light of the best possible recovery; and
- (9) The range of reasonableness of the settlement in light of all attendant risks of litigation

Girsh, 521 F.2d at 157.

In the present litigation, consideration of the settlement in light of these factors demonstrates that the settlement is fair, reasonable and adequate, and that final approval should be granted.

1. The Complexity, Expense, and Likely Duration of the Litigation

The first *Girsh* factor weighs the value received by the class against the complexity, expense and likely duration of the litigation. *Girsh*, 521 F.2d at 157. In so doing, it “captures ‘the probable costs, in both time and money, of continued litigation.’” *Cendent*, 264 F.3d at 233 (quoting *General Motors*, 55 F.3d at 812). In light of the expansive cooperation received by the class from Sparboe in exchange for this settlement, its impact on the case at present, and its likely impact going forward, this factor weighs heavily in favor of final approval.

“An antitrust class action is arguably the most complex action to prosecute . . . [T]he legal and factual issues involved are always numerous and uncertain in outcome.” *Linerboard*, 296 F. Supp. 2d at 577 (quotations omitted). The complexities of an antitrust case have become evident at an earlier stage of litigation since the Supreme Court’s decision in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), which some courts have found requires factual enhancement to support a claim at the pleading stage. Here, the early nature of Sparboe’s cooperation has significant value in and of itself as it occurred early in the litigation in advance of the Court’s ruling on the remaining Defendants’ original motions for dismissal. Sparboe’s cooperation provided enormous value to class. After the filing of the Complaint, which incorporates the information received from Sparboe, nine Defendants answered the Complaint rather than moving to dismiss. Sparboe’s cooperation may also assist Plaintiffs in defeating the motions to dismiss that were filed. *See, e.g., In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litigation*, MDL No. 08-1999, 2010 WL 3310264, at *9, n.8 (E.D. Wis. August 16, 2010) (approving a cooperation-only settlement which “provided plaintiffs with quite a bit of information about the operation of the alleged conspiracy” where “defendants would [otherwise] have filed motions to dismiss. If these motions were granted, the class would not have received any discovery at all.”).

Moreover, the Settlement Agreement acts as an “ice-breaker” settlement that “should increase the likelihood of future settlements.” *Linerboard*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (“The Court also notes that this settlement has significant value as an ‘ice-breaker’ settlement—it is the first settlement in the litigation—and should increase the likelihood of future settlements.”); *In re Lawnmower Engine Horsepower Marketing & Sales Practices Litigation*, 2010 WL 3310264, at *9, n.8 (“If nothing else, plaintiffs obtained information about

the conspiracy earlier than they would have in discovery, enabling Interim Counsel to better prepare for depositions and enhancing plaintiffs' settlement leverage against the remaining defendants."). Indeed, Plaintiffs have already been able to achieve a \$25 million settlement with the Moark Defendants, which may not have been achieved at this early stage without the information obtained from Sparboe.

Furthermore, the cooperation obtained through the Settlement Agreement will enhance and strengthen Plaintiffs' claims against the remaining Defendants and possibly others while avoiding the risk, expense and duration of continued litigation against Sparboe. The value of Sparboe's cooperation thus illustrates why courts routinely approve settlements that require a settling defendant to help plaintiffs prosecute the litigation against remaining defendants. *Linerboard*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) ("The provision of such [cooperation] is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."); *In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable when settling a complex case); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004) (acknowledging the assistance that the settling defendants will provide "in pursuing this case against the remaining Defendants"); *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D.C. Md. 1983) ("[T]he commitment [the] Distributor defendants have made to cooperate with plaintiffs will certainly benefit the classes, and is an appropriate factor for the court to consider in approving a settlement"); *In re Corrugated Container Antitrust Litig.*, MDL No. 310, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd*, 659 F.2d 1322, 1329 (5th Cir. 1981) ("The settlement agreements provided for cooperation from the settling defendants that constituted a substantial benefit to the class. Those provisions were intended to save plaintiffs

time and expense in the continuing litigation . . . [and] made certain information and expertise available to the class which might not have been available through normal discovery.”⁴

Thus, the first *Girsh* factor strongly favors final approval of the settlement.

2. The Reaction of the Class to the Settlement

The second *Girsh* factor is the reaction of class members to the settlement. This factor “attempts to gauge whether members of the class support the settlement.” *Prudential*, 148 F.3d at 318. In analyzing this factor, the Court is to examine the “number and vociferousness of the objectors.” *GM Trucks*, 55 F.3d at 312. A lack of substantial objections or exclusions by class members is highly significant. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993); *Linerboard*, 296 F. Supp. 2d at 577-78.

Here, despite direct mail notices sent to Defendants’ customers and wide publication in industry journals, the wider press and on the internet, there was not a single objection to the Settlement Agreement from a potential class member. Keough Decl. ¶ 17. Courts typically approve settlements where no objections have been received. *See, e.g., Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 415 (E.D. Pa. 2010) (Pratter, J.) (approving settlement

⁴ *See also In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. Tex. 1979) (court approved settlement in which settling defendant agreed to assist plaintiffs by providing access to witnesses), *cert. denied*, 452 U.S. 905 (1981); *In re Ivan F. Boesky Sec. Litig.*, 948 F.2d 1358, 1362 (2d Cir. 1991) (acknowledging the importance of the defendant’s agreement to “provide information to the plaintiffs potentially useful in the litigation against the nonsettling defendants.”); *In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (“It is apparent that Beecham’s assistance in the case against Bristol will prove invaluable to the plaintiffs, and adds substantially to the economic value of the settlement package to the plaintiff classes.”); *Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 339 (S.D.N.Y. 2005) (“Although the settlement fund by itself represents a fair and reasonable recovery, I note that the settlement also includes significant non-monetary benefits. Pursuant to the settlement, Jenkins has agreed to provide (and has already provided) discovery on plaintiffs’ claims. The value of this agreement is hard to determine, but it is not negligible.”), *aff’d in part, vacated in part, Denney v. Deutsche Bank AG*, 443 F.3d 253 (2d Cir. 2006); *Minpeco, S.A. v. Hunt*, 127 F.R.D. 460, 463 (S.D.N.Y. 1989) (“[A]greements involving a settling defendant’s assistance in procuring the testimony of its employees have been approved in other cases.”).

that received no objections to the fairness or adequacy of the settlement); *Barel v. Bank of America*, 255 F.R.D. 393, 400 (E.D. Pa. 2009) (same); *Steele v. Welch*, No. 03 Cv. 942, 2005 WL 3801469, at *2 (E.D. Pa. Feb 19, 2003) (same); *Marino v. UDR*, No. 05 Civ. 2268, 2006 WL 1687026, at *3 (E.D. Pa. June 14, 2006) (same); *In re CIGNA Corp.*, No. 02 Civ. 8088, 2007 WL 2071898 (E.D. Pa. July 13, 2007) (“The class has been exceptionally supportive in that no objections to the settlement were filed.”); *Meijer, Inc. v. 3M*, No. 04 Civ. 5871, 2006 WL 2382718, at *13 (E.D. Pa. Aug. 14, 2006) (“This total absence of objections, coupled with such a low opt-out rate, argues in favor of the proposed Settlement.”); *U.S. v. Pennsylvania*, 160 F.R.D. 46, 49 (E.D. Pa. 1994) (“The failure of any class member to object to the proposed settlement despite having adequate opportunity to do so demonstrates that the class members assent to the agreement”) (citing *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313-14 & n. 15 (3d Cir.1993)).

Moreover, in a class of at least 13,211 direct purchasers – the number of customers to whom direct mail notice was sent – only 364 requests for exclusion from the settlement were received. Keough Decl. ¶ 16. Many of these were received from multiple entities related within a larger corporate family, meaning that approximately only 207 distinct (*i.e.*, unrelated) direct purchasers have requested exclusion. Even taking the higher number of requests for exclusions (363), this constitutes less than three percent of the likely class of direct purchasers. This is a remarkably low number of requests for exclusions. These numbers are consistent with Third Circuit precedent and the decisions of other federal courts approving settlements. *See, e.g.*, *Stoetznner*, 897 F.2d at 118-19 (holding that only 29 objections in 281 member class – or 10% – “strongly favors settlement”); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (affirming conclusion of district court that class reaction was favorable when 19,000 class members opted out of class of eight million and 300 objected); *In re Ikon*

Office Solutions, Inc., Sec. Litig., 194 F.R.D. 166, 175 (E.D. Pa. 2000) (settlement approved where there were 2,500 requests for exclusion from an original notice to 140,000 class members); *Lan v. Ludrof*, No 06 Civ. 114, 2008 WL 763763, at *7 (W.D. Pa. Mar. 21, 2008) (settlement approved where only 2.5% of the class objected).

Thus, the second *Girsh* factor weighs heavily in favor of final approval. See *McAlarnen v. Swift Transp. Co., Inc.*, No. 09 Civ. 1737, 2010 WL 365823, at *7 (E.D. Pa. Jan. 29, 2010) (a lack of objections and low exclusion rate “weighs heavily in favor of final approval); *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06 Civ. 3202, 2009 WL 2137224, at *9 (E.D. Pa. July 16, 2009) (“Such a response (or lack thereof) weighs greatly in favor of approving the settlement.”); *In re PNC Fin. Servs. Group, Inc.*, No 02 Civ. 271, 2006 WL 1984660, at *9 (W.D. Pa. July 13, 2006) (“Here, no class member objected to the proposed settlement. Similarly, only five opt outs were received after the mailing of over 73,000 copies of the notice and the publication of the summary notice. Under these circumstances an inference of strong class support is properly drawn.”); *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (holding that, when only 70 out of 90,000 potential class members opted out and “not a single class member objected to the proposed settlement ... [s]uch a response (or lack thereof) weighs greatly in favor of approving the settlement”) (citing cases).

3. The Stage of the Proceedings and Amount of Discovery Completed

The third *Girsh* factor is the stage of the proceedings and the amount of discovery completed. This factor “captures the degree of case development that Interim Counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *General Motors*, 55 F.3d at 813. Here, Plaintiffs, through Interim Counsel, conducted extensive investigations into the case in preparation for filing of the complaint. Hausfeld Decl. ¶ 5. Moreover, Interim Counsel

were privy to four attorney proffers from Sparboe, including the production of hundreds of pages of highly pertinent documents, prior to entering the Settlement Agreement.

The investigations and proffers provided counsel, highly experienced antitrust litigators, with more than adequate appreciation of the strengths and weaknesses of the case. *Id.* at ¶ 14. *See, e.g., In re Lucent Technologies, Inc., Securities Litigation*, 307 F. Supp. 2d 663, 638 (D.N.J. 2004) (discovery, outside investigation, extensive motion practice and settlement negotiations shed light “on the strengths and weaknesses of the case, the risks of litigation, and the issues the Class would face at trial. The parties had more than a sufficient basis for assessing the strengths and weaknesses of the claims when they submitted the Settlement to the Court for approval. This factor thus weighs in favor of the Settlement.”); *Rent-Way Securities Litigation*, 305 F. Supp. 2d 491, 509 (W.D. Pa. 2003) (“Interim Counsel have performed significant work prosecuting this action and investigating the Class’s claims. Their knowledge of the case is impressive and we are confident that they undertook these negotiations with a strong appreciation for the relative merits of their factual and legal contentions.”); *Prudential*, 962 F. Supp. at 538 (acknowledging that, following discovery and other investigation the parties had “reached a stage in the proceedings where they adequately understood the merits of the putative class action and could fairly, safely, and appropriately decide to settle the action.”).

Moreover, while the case is in an early stage and formal discovery has yet to take place “Plaintiffs benefit from an early resolution in that they save the expenses and inevitable rising costs of counsel fees.” *In re Am. Sterilizer S’holder Litig.*, No. 84 Civ. 5587, 1985 WL 4027, at *4 (E.D. Pa. Nov. 26, 1985). This factor, therefore, weighs in favor of final approval. *See, e.g., Milliron v. T-Mobile USA, Inc.* 2009 WL 3345762 at *7 (D.N.J. Sept. 10, 2009) (“While little discovery has taken place within the confines of this particular action, the parties have each

assessed the settlement value of the case and have examined the strengths and weaknesses of their relative positions . . . Thus, even though the action settled at a relatively early stage in the proceedings, the Court finds that counsel on both sides of the table are experienced and able litigators, and that the parties have sufficiently apprised themselves of the relevant facts and law to make a knowledgeable decision as to settlement.”).

4. The Risks of Establishing Liability and Damages and of Maintaining a Class Action Through Trial

The fourth, fifth and sixth *Girsh* factors “examine what the potential rewards (or downside) of litigation might have been had Interim Counsel elected to litigate the claims rather than settle them.” *General Motors*, 55 F.3d at 814. Here, “the Court need not delve into the intricacies of the merits of each side’s arguments, but rather may ‘give credence to the estimation of the probability of success proffered by Interim Counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action.’” *Perry* 229 F.R.D. at 115 (quoting *Lachance v. Harrington*, 965 F. Supp. 630, 638 (ED. Pa. 1997)).

While Interim Counsel believe that they will prevail at trial, they recognize that antitrust cases, like all complex litigation against large companies with highly talented defense counsel, have inherent risks.⁵ “Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues.” *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *see also State of W.Va v. Chas. Pfizer*

⁵ Because Plaintiffs are continuing to prosecute this case against the remaining Defendants, it is not appropriate for Interim Counsel to highlight potential weaknesses or to emphasize particularly vulnerable points in their case. To do so could prejudice the prosecution of this action. *See Manual for Complex Litigation - Fourth* § 21.651 (2004) (“Given that the litigation might continue against other defendants. The parties may be reluctant to disclose fully and candidly their assessment of the proposed settlement’s strengths and weaknesses that led them to settle separately.”).

& Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) (“It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.”), *aff’d*, 440 F.2d 1079 (2d Cir. 1971).

Interim Counsel believe that Sparboe’s cooperation greatly enhances the likelihood that they will prevail at trial against the remaining Defendants. Voluntary cooperation, such as that obtained through the Settlement Agreement, significantly reduces the risks associated with discovery and, as such, voluntary cooperation is growing in popularity with lawmakers. *See, e.g., Lawnmower Engine*, 2010 WL 3310264, at *9, n.9 (stating that “there is a clear difference between voluntary cooperation and providing similar information through adversarial discovery mechanisms” and noting that “in the last few years Congress has recognized the value of a co-conspirator’s agreement to cooperate with plaintiff’s counsel.”).

Moreover, by encouraging further monetary settlements, such as the one entered into with the Moark Defendants, the Sparboe settlement greatly reduces the likelihood that the case will reach trial and, in the event that it does, may aid the Court in eliminating certain issues as triable issues of fact. The cooperation obtained from Sparboe also greatly enhances Plaintiffs’ ability to establish damages, and may encourage a complete settlement of the action reducing the likelihood that damages will have to be proven, a potentially complex issue to resolve. *See, e.g., Lucent*, 307 F. Supp. 2d at 646 (noting potential for battle of the experts); *Cendant*, 109 F. Supp. 2d at 264 (same); *Lazy Oil*, 95 F. Supp. 2d at 337 (“[C]ourts have recognized the need for compromise where divergent testimony would render the litigation an expensive and complicated battle of the experts.”); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (recognizing the risk plaintiffs face in not establishing damages in class action antitrust cases).

The fourth, fifth and sixth *Girsh* factors, therefore, weigh in favor of approval of the Settlement Agreement.

5. The Ability of the Defendant to Withstand a Greater Judgment

The seventh *Girsh* factor “is concerned with whether the defendants could withstand a judgment for an amount significantly greater than the Settlement.” *Cendant*, 264 F.3d at 240. This factor deserves little weight, especially in light of the risks of continued litigation against remaining Defendants without the cooperation obtained from Sparboe. *See Lazy Oil*, 95 F. Supp. 2d at 318 (“The Court presumes that Defendants have the financial resources to pay a larger judgment. However, in light of the risks that Plaintiffs would not be able to achieve any greater recovery at trial, the Court accords this factor little weight in deciding whether to approve the proposed Settlement.”); *Perry*, 229 F.R.D. at 116 (“Fleet could certainly withstand a much larger judgment as it has considerable assets. While that fact weighs against approving the settlement, this factor’s importance is lessened by the obstacles the class would face in establishing liability and damages.”).

6. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Range of Reasonableness of the Settlement Fund in Light of All of the Attendant Risks of Litigation

The eighth and ninth *Girsh* factors assess the reasonableness of the settlement fund. They “test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *Warfarin Sodium*, 391 F.3d at 538. As courts have explained, “[w]hile the court is obligated to ensure that the proposed settlement is in the best interest of the class members by reference to the best possible outcome, it must also recognize that settlement typically represents a compromise and not hold counsel to an impossible standard.” *In re Aetna, Inc.*, MDL No. 1219, 2001 WL 20928 at *6 (E.D. Pa. Jan. 4, 2001); *see also General Motors*, 55 F.3d at 806 (noting that “after all,

settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.”); *Lazy Oil*, 95 F. Supp. 2d at 338-39 (stating that a court “should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and abandoning of highest hopes”) (quotations omitted).

As discussed above, the cooperation agreement provides a valuable benefit to the Class because it will save time, reduce costs, and provide access to information and documents to which the Plaintiffs might not otherwise have access. *Linerboard*, 292 F. Supp. 2d at 642, *Corrugated Container*, 1981 WL 2093 at *16. While this value cannot be measured in monetary terms, it nevertheless should be accorded significant weight by the Court in determining the reasonableness of the settlement, especially in light of the procedural posture of the litigation and the pleading standards discussed by the Supreme Court in *Twombly*. See, e.g., *Linerboard*, 292 F. Supp. 2d at 642; *Corrugated Container*, 1981 WL 2093, at *16.

In addition, the Sparboe cooperation should not be viewed in isolation, but should be viewed in light of the enhanced ability of the Plaintiffs to achieve a valuable resolution of the litigation against the remaining Defendants. This enhanced ability is proven by the settlement with the Moark Defendants that was reached shortly after the extent of Sparboe’s cooperation was disclosed to Defendants by virtue of the filing of the Second Consolidated Amended Complaint. As such, the Court must factor in the possibility that the additional delay and risk that would have existed in this litigation absent the Sparboe cooperation could ultimately render any future recovery “less valuable to the Class than receiving the benefits of the proposed Settlement at this time.” *Rent-Way*, 305 F. Supp. 2d at 501.

The eighth and ninth *Girsh* factors, therefore, also weigh in favor of final approval.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement Agreement with Sparboe.

Dated: December 14, 2010

Respectfully submitted,

/s/ Steven A. Asher _____

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EXHIBIT A

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS :
ANTITRUST LITIGATION :

MDL No. 2002
Case No: 08-md-02002

THIS DOCUMENT APPLIES TO :
ALL ACTIONS :

**DECLARATION OF MICHAEL D. HAUSFELD IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN
PLAINTIFFS AND DEFENDANT SPARBOE FARMS, INC.**

I, Michael D. Hausfeld, declare as follows:

1. I am one of the founding partners and Chairperson of the law firm Hausfeld LLP.
2. I am one of the Court-appointed Interim Co-Lead Counsel for Direct Purchasers in the above captioned action.
3. I submit this declaration in support of the motion for final approval of the proposed settlement filed by the Plaintiffs.
4. I was one of the principal negotiators of the proposed Settlement Agreement with Defendants Sparboe Farms, Inc. (“Sparboe”), although all Interim Co-Lead Counsel for Direct Purchasers were actively involved in these negotiations.
5. Plaintiffs entered the negotiations with Sparboe with a significant amount of knowledge of Defendants’ antitrust conspiracy, as a result of months of investigations into the conspiracy conducted by the numerous experienced law firms representing them. While they had filed a complaint that they believe would have withstood motions to dismiss that had been filed by the Defendants, Plaintiffs recognized at that time that there is a certain amount of uncertainty and risk underlying any such motion, especially in light of the, then recent, Supreme Court decision in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007).

6. Sparboe was fully prepared to defend itself and litigate this case. Nevertheless, Sparboe was interested in seeing if an agreement could be reached to resolve this litigation. There were protracted, arm's length settlement discussions over the course of three months between Interim Co-Lead Counsel and Sparboe.

7. In addition to numerous teleconferences in furtherance of settlement, Sparboe began cooperating with Plaintiffs through a total of four in-person proffers to Plaintiffs' Counsel, which included a review of Sparboe documents and an interview with a Sparboe employee.

8. Negotiations with Sparboe began in mid-March, 2009. Negotiations were tense and at arm's-length. Prior to entering into the Settlement Agreement, the Interim Co-lead Counsel wanted to be convinced that there was real benefit to the Class as part of the settlement given that the agreement was for cooperation without direct monetary compensation to the Class Members.

9. On March 26, 2009, Sparboe made an initial attorney proffer to representatives of Plaintiffs' Interim Co-Lead Counsel in Washington, DC regarding what Sparboe's information would show and how it would assist Plaintiffs' in the prosecution of their case.

10. On, April 23, 2009, Sparboe proffered both hundreds of pages of documents and live witness testimony from Sparboe employee Wayne Carlson in Minneapolis to additional representatives of the Interim Co-Lead Counsel.

11. Plaintiffs' counsel were not initially convinced that they should enter into a settlement agreement at this time. Thus, Sparboe's counsel and Plaintiffs' Co-Lead Counsel engaged in several additional telephone conferences regarding the cooperation that Sparboe could provide. At several points during this period, it appeared that no settlement would be reached.

12. On May 26, 2009, Sparboe made a third attorney proffer to Plaintiffs' Counsel in Washington, DC, by providing hundreds of pages of additional documents, as well as identifying several executives and current and former Sparboe employees who could offer testimony in the case that may corroborate the information contained in the documents, as well as provide additional information.

13. On June 3, 2009, Sparboe made a fourth attorney proffer of documents and proffered additional descriptions of expected witness testimony to representatives of all four Interim Co-Lead Counsel.

14. I believe that Sparboe's documents and proffer support Plaintiffs' allegations that there was a conspiracy to reduce egg supply through various means and that Sparboe opposed and eventually withdrew from this conspiracy. Further, Sparboe produced documents from its in-house counsel that it may have otherwise withheld had Sparboe litigated this case.

15. On Monday, June 8, 2009 the Settlement Agreement was fully executed by the Co-Leads and Sparboe's Counsel (attached as Exhibit 1).

16. On Tuesday, June 9, 2009, Sparboe made documents related to the allegations in the Consolidated Amended Complaint available for inspection and review by Plaintiffs' Counsel in Minneapolis.

17. In the following months, Sparboe made four witnesses available for interview who provided invaluable information about Defendants' conspiracy.

18. Plaintiffs utilized this information to file a Second Amended Complaint on April 7, 2010 providing in exhaustive detail specific instances relating to Defendants' formation and implementation of an antitrust conspiracy.

19. As a result of Sparboe's cooperation and the highly detailed complaint that it enabled, nine Defendants who had previously moved to dismiss Plaintiffs' complaint, chose to answer the Second Amended Complaint. Sparboe's cooperation, therefore, has already conferred a tangible benefit of significant value on Plaintiffs.

20. Moreover, it is anticipated that Sparboe's cooperation will continue long after the Court finally approves the Settlement Agreement and that it will be instrumental in the continuing prosecution of this action against Non-Settling Defendants. Sparboe, for example, is currently preparing to produce documents from an number of additional custodians with information about Defendants' conspiracy, although such additional cooperation has been delayed by the ongoing privilege dispute raised by Defendant United Egg Producers ("UEP").

21. The settlement, thus, provides significant value to the Class, given that these documents would not otherwise have been available through discovery until a later time frame and might otherwise have been withheld pending resolution of discovery disputes by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 14, 2010.



Michael D. Hausfeld

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	MDL No. 2002
<hr style="width: 100%;"/>	:	08-md-02002
	:	
THIS DOCUMENT APPLIES TO:	:	
All Direct Purchaser Actions	:	

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS
AND SPARBOE FARMS, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 8th day of June, 2009 (the “Execution Date”), by and between Sparboe Farms, Inc. (“Sparboe Farms”), together with its past and present parents, subsidiaries and affiliates, and plaintiff class representatives (“Plaintiffs”), as defined herein at Paragraph 7, both individually and on behalf of a class of direct purchasers of Shell Eggs and Processed Egg Products (as described herein at Paragraph 11) in the United States during the period January 1, 2000 through the present.

WHEREAS, Plaintiffs are prosecuting the above-captioned action currently pending and consolidated in the Eastern District of Pennsylvania, and including all actions transferred for coordination, and all direct purchaser actions pending such transfer (including, but not limited to, “tag-along” actions) (the “Action”) on their own behalf and on behalf of the class against Sparboe Farms and other Defendants;

WHEREAS, Plaintiffs allege that Sparboe Farms participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Shell Eggs and Processed Egg Products in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with Sparboe Farms according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of the Plaintiffs and the class;

WHEREAS, Sparboe Farms, despite its belief that it is not liable for and has good defenses to the claims alleged in the Action, desires to settle the Action, and thus avoid the risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, Sparboe Farms agrees to further cooperate with Plaintiffs' Counsel and the class by providing information related to possible violations of the Sherman Act that have or may have been committed by other Defendants to this Action, or other parties not named as Defendants, with regard to the sale of Shell Eggs and Processed Egg Products;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel (as defined below) and counsel for Sparboe Farms, and this Agreement has been reached as a result of those negotiations;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Sparboe Farms only, without costs as to Plaintiffs or the class, subject to the approval of the Court, on the following terms and conditions:

Definitions.

The following terms, as used in this Agreement, have the following meanings:

1. “Class Counsel” shall refer to the law firms of Weinstein, Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. “Plaintiffs’ Counsel” shall refer to the law firms identified on pages 133-138 of the Consolidated Amended Class Action Complaint filed in the Action on January 30, 2009.

2. “Sparboe Farms’ Counsel” shall refer to the law firm of Stoel Rives LLP, 33 South Sixth Street, Suite 4200, Minneapolis, MN 55402.

3. “Counsel” means both Plaintiffs’ Counsel and Sparboe Farms’ Counsel, as defined in Paragraphs 1 and 2 above.

4. “Class Member” means each member of the class, as defined in Paragraph 11 of this Agreement, who does not timely elect to be excluded from the class, and includes, but is not limited to, Plaintiffs.

5. “Class Period” means the period from and including January 1, 2000 up to and including the date when Notice of the Court’s entry of an order preliminarily approving this settlement and certifying a class for settlement purposes is first published.

6. “Defendant(s)” refers to the persons or entities who are now or are prior to the time of notice added as Defendants in this Action, including, but not limited to, United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O’Lakes Inc.; Moark LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; R.W. Sauder, Inc., Sparboe Farms, Inc.,

and each of their corporate parents, subsidiaries, and affiliated companies, as well as all individuals, partnerships, corporations and associations not named as Defendants but which participated as co-conspirators in the alleged violations.

7. "Plaintiffs" means each of the following named class representatives: T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.

8. "Releasees" shall refer, jointly and severally, and individually and collectively to Sparboe Farms, its parents, subsidiaries, and affiliated companies, and their past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are not Non-Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

9. "Releasers" shall refer jointly and severally and individually to the Plaintiffs, the Class Members and to each of their respective past and present officers, directors, parents, subsidiaries, affiliates, partners, and insurers, and to the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

10. "Non-Settling Defendants" refers to the persons or entities, other than Sparboe Farms, who are now or are prior to the time of notice added as Defendants in this Action, including, but not limited to, United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O'Lakes Inc.; Moark LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.;

R.W. Sauder, Inc., and each of their corporate parents, subsidiaries, and affiliated companies, as well as all individuals, partnerships, corporations and associations not named as Defendants but which participated as co-conspirators in the alleged violations.

Settlement Class Certification

11. Subject to Court approval, the following class shall be certified for settlement purposes only as to Sparboe Farms:

All persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

a.) Shell Egg Subclass

All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

b.) Egg Products Subclass

All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the Class and Subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

Approval of this Agreement and Dismissal of Claims

12. Plaintiffs and Sparboe Farms shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of the Settlement and

securing both the Court's certification of the Class and the Court's approval of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Sparboe Farms.

13. Within (2) two business days after the execution of this Agreement by Sparboe Farms, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Sparboe Farms pending approval of this Agreement. As soon as practicable after execution of the Agreement by Sparboe Farms, Plaintiffs shall submit to the Court a motion: (a) for certification of a class for settlement purposes; and (b) for preliminary approval of the settlement, and authorization to disseminate notice of class certification, the settlement, and the final judgment contemplated by this Agreement to all potential Class Members. The Motion shall include: (a) the definition of the class for settlement purposes as set forth in Paragraph 11 of this Agreement; (b) a proposed form of, method for, and date of dissemination of notice; and (c) a proposed form of final judgment order. The text of the items referred to in clauses (a) -- (c) above shall be agreed upon by Plaintiffs and Sparboe Farms before submission of the Motion. If possible, Plaintiffs shall combine dissemination of notice of the proposed certification of the class for settlement purposes and the Agreement with notice of other settlement agreements. Individual notice of the Agreement shall be mailed to persons and entities identified by Sparboe Farms, and, as ordered by the Court, those identified by Plaintiffs and Plaintiffs' Counsel or other Non-Settling Defendants in the Action, who are located in the United States and who purchased Shell Eggs and Processed Egg Products directly from Sparboe Farms or any Non-Settling Defendant(s) in the Action during the Class Period, and Notice of the Settlement shall be published once in the Wall Street Journal and in such other publications, if any, as Sparboe

Farms and Class Counsel agree to or as ordered by the Court. Within twenty (20) business days after the Execution Date, Sparboe Farms shall supply to Class Counsel at Sparboe Farms' expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has.

14. Within twenty (20) business days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide Sparboe Farms, through its counsel, Stoel Rives LLP, a written list of all potential Class Members who have exercised their right to request exclusion from the class.

15. If the Court approves this Agreement, Plaintiffs and Sparboe Farms shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Sparboe Farms shall agree upon as provided for in Paragraphs 12 and 13 of this Agreement:

- (a) as to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- (b) directing that, as to Sparboe Farms, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- (c) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- (d) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the final judgment of dismissal as to Sparboe Farms shall be entered; and
- (e) requiring Class Counsel to file with the Clerk of the Court a record of potential Class Members who timely excluded themselves from the class, and to provide a copy of the record to counsel for Sparboe Farms.

16. This Agreement shall become final only when (a) the Court has entered an order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action against Sparboe Farms on the merits with prejudice as to all

Class Members and without costs has been entered, and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review ("Finally Approved"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above-stated times. On the Execution Date, Plaintiffs and Sparboe Farms shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraph 20 of this Agreement.

Release and Discharge

17. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming Finally Approved, and for other valuable consideration as described herein, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from conduct concerning any agreement among Defendants, the reduction or restraint of supply, the reduction of or restrictions on production capacity, or the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Processed Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted,

whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which arise from or are predicated on the facts and/or actions described in the Complaints under any federal, state or foreign antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, from the beginning of time to the date of this Agreement (the "Released Claims"). The Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Processed Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

a. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Plaintiffs hereby certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that

are the subject matter of this Settlement Agreement , but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

18. In addition to the provisions of Paragraph 17, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming Finally Approved, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraph 17. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the Release.

19. The release and discharge set forth in Paragraphs 17 and 18 herein do not include claims relating to payment disputes, physical harm, defective product or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant.

Rescission if the Agreement is Not Approved

20. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 15 of this Agreement, or if the Court enters the final judgment and

appellate review is sought, and on such review, such final judgment is not affirmed, then Sparboe Farms and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

21. In the event of rescission, if final approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 15 of this Agreement, Class Counsel agrees that this Settlement Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Sparboe Farms, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding except as otherwise subsequently and independently obtained by Class Counsel pursuant to the Federal Rules of Civil Procedure.

22. Class Counsel further agrees that, in the event of rescission, the originals and all copies of documents provided by or on behalf of Sparboe Farms pursuant to this Agreement, together with all documents and electronically stored information containing information provided by Sparboe Farms, including but not limited to, notes, memos, records, interviews, shall be returned or produced to Sparboe Farms, provided that attorney notes or memoranda may be destroyed rather than produced if an affidavit of such destruction is promptly provided to Sparboe Farms through its counsel.

Cooperation Agreement

23. Following the Execution Date of this Agreement, and continuing through the conclusion of this litigation, Sparboe Farms will provide Plaintiffs with such cooperation as may

be reasonably requested by Class Counsel for the prosecution of the pending action or any other released claims pursuant to Paragraphs 17 and 18 related to Shell Eggs or Processed Egg Products. Prior to preliminary approval of the Settlement Agreement, such cooperation shall include, but shall not be limited to: making documents related to the claims asserted in this action available for review and making witnesses with knowledge related to the claims asserted in this action available for informal interviews and, as necessary, consultation with Plaintiffs' Counsel as Class Counsel might reasonably request. In addition, within five (5) business days of the Court's grant of preliminary approval of this Settlement Agreement, or as soon as practicable thereafter, Sparboe Farms shall continue to cooperate with Class Counsel, including but not limited to producing documents related to the claims asserted in this action and by making witnesses available at an appropriate time to testify at depositions and at trial, subject to the limitations agreed upon below. Sparboe Farms agrees to provide discovery to Plaintiffs in the pending Action as if Sparboe Farms were a party subject to all rules for discovery. Sparboe Farms has no obligation to cooperate with respect to any Excepted Claims.

Further:

- (a) With respect to witnesses, if requested in good faith by Class Counsel, Sparboe Farms agrees to use its best efforts to produce interviewees, at a location to be chosen by Sparboe Farms, who are current or former directors, officers, or employees of Sparboe Farms for deposition at the time discovery in this Action commences subject to the limitations imposed by the Federal Rules of Civil Procedure or by any additional limitations imposed by any order or stipulation in this Action governing the depositions of any Non-Settling Defendant, and make those persons available for trial testimony, if requested in good faith by Plaintiffs'

Counsel. Should it be reasonably necessary, and if requested in good faith by Class Counsel, Sparboe Farms shall also make witnesses, including corporate designees, available to testify at deposition and trial, for the prosecution of the pending Action or any other action related to Shell Eggs and Processed Egg Products (except for the Excepted Claims) to which this Settlement Agreement applies to release the claims asserted therein, which testimony may pertain to knowledge of and/or participation by Sparboe Farms, including but not limited to its officers, directors and employees, regarding present and future claims asserted in the pending Action or any other actions related to Shell Eggs or Processed Egg Products, except for the Excepted Claims to which this Settlement Agreement applies to release the claims asserted therein. Notwithstanding anything in this Paragraph, the cooperation of individuals shall be subject to their individual rights and obligations.

(b) With regard to documents and electronic data, Sparboe Farms will produce, at a location of its choosing, pursuant to and subject to the limitations imposed by Rule 30(b)(6) and the other Federal Rules of Civil Procedure as well as any additional limitation imposed by order or stipulation in this Action governing the authentication of documents or corporate representative testimony related to any Non-Settling Defendant, a corporate representative sufficiently qualified to authenticate and make admissible under the applicable rules of evidence, as well as under the rules of any state, all Sparboe Farms documents and electronic data as may in good faith be requested by Plaintiffs' Counsel in the

pending Action related to Shell Eggs or Processed Egg Products, except for the Excepted Claims.

24. Plaintiffs, Class Counsel and Plaintiffs' Counsel agree not to assert that Sparboe Farms waived its attorney-client privilege, work product immunity or any other privilege or protection with respect to information or documents provided or identified to Class Counsel or Plaintiffs' Counsel pursuant to this Agreement. Nor should anything in this Agreement be construed as a waiver of any such privilege, immunity or protection.

Confidentiality and Non-Use of Information and Documents

25. Should the Settling Parties be required to submit any information or documentation to the Court to obtain preliminary approval, such submission shall be, to the full extent permitted, for review by the court in camera only. All information and documents provided by Sparboe Farms to Class Counsel shall be subject to the protective order entered in this action, and any documents or electronically stored information designated as "Confidential" or "Attorneys Eyes Only" by Sparboe Farms shall have the same equivalent protection under the protective order.

26. Class Counsel agree to use any and all of the information obtained from Sparboe farms only for the purpose of this litigation, and agrees to be bound by the terms of the protective order described above in Paragraph 25. Any Plaintiffs' Counsel who receives information or documents produced in accordance with this Agreement agrees to be bound by all of the terms of this Agreement. Notwithstanding the foregoing, or the terms of the protective order, Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances will information or documents be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any other foreign, state or

federal action against one or more of the Releasees or Non-Settling Defendants, (ii) counsel for any plaintiff or Class Member who elects to opt out of the proposed litigation class upon Plaintiffs' motion for class certification or who elects to opt out of the proposed class for settlement purposes under this Agreement, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any counsel representing or advising direct or indirect purchasers of "specialty" shell egg or egg products (such as "organic," "free range," or "cage free") and purchasers of hatching eggs (used by poultry breeders or produce breeder stock or growing stock for laying hens or meat).

Notice of Settlement to Class Members

27. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of this Settlement Agreement is provided in accordance with the Federal Rules of Civil Procedure and Court order. Class Counsel will undertake all reasonable efforts to obtain from the Non-Settling Defendants the names and addresses of those persons who purchased shell eggs or egg products directly from any Non-Settling Defendant during the Class Period. Notice of this Settlement will be issued no earlier than 180 days following Preliminary Approval of this Settlement Agreement by the Court, but as soon as practicable thereafter, unless otherwise ordered by the Court.

28. Within three months from the date of Final Approval, Sparboe Farms agrees to reimburse Plaintiffs up to a maximum of \$350,000.00 towards the costs of notice of the Settlement under this Agreement, provided the occurrences described below in Paragraph 29 do not occur.

29. In the event Plaintiffs enter into a cash settlement with any Non-Settling Defendant and receive preliminary approval of that settlement prior to the issuance of notice under this Agreement (such that the settlement notices can be combined), Plaintiffs shall apply those settlement funds towards the cost of notice, thus reducing or eliminating Sparboe Farms' obligation to reimburse Plaintiffs for the notice costs of this Agreement. In the event Plaintiffs obtain certification of a litigation class prior to the issuance of notice under this Agreement (such that the notice of this Settlement Agreement and the notice of class certification can be combined), then Plaintiffs agree to be fully responsible for costs of the combined notice without any cash contribution by Sparboe Farms.

30. In the event Plaintiffs enter into a cash settlement with any Non-Settling Defendants after notice of this settlement has been issued and paid for, in whole or in part, once that cash settlement has been Finally Approved, Plaintiffs shall release Sparboe Farms from any obligation to reimburse Plaintiffs for the notice costs of this Agreement. Forgiveness of Sparboe Farms's obligation to reimburse Plaintiffs for costs of notice of this Agreement will not exceed the value of such cash settlements, as Finally Approved. Under no circumstances shall Sparboe Farms be responsible for any costs or expenses in excess of \$350,000.00.

Subsequent Modification of Class Definition or Class Period

31. In the event that Plaintiffs either enter into a settlement agreement with any Non-Settling Defendant, or obtain certification of a litigation class, and the definition of the class in any subsequent settlement agreement or certification order differs from the definition contained in this Agreement in Paragraph 11 (including an expansion of the Class Period), Plaintiffs agree to use their best efforts to modify the class definition and Class Period of this Agreement to conform to any and all subsequent expansion of the class definition or Class Period, including

moving for approval of an amendment to this Agreement and the dissemination of notice of the amendment in conjunction either with notice of any subsequent settlement class or notice of the certification of a litigation class, or both in the event that there are more than one subsequent modification to the class definition or Class Period. In no event shall Sparboe Farms be responsible for any additional notice costs or expenses.

Miscellaneous

32. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Non-Settling Defendant or any unnamed co-conspirator other than the Releasees. All rights of any Class Member against Non-Settling Defendants or unnamed co-conspirators or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and Processed Egg Products by Sparboe Farms to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

33. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Sparboe Farms. This Agreement shall be governed by and interpreted according to the substantive laws of the State of Pennsylvania without regard to its choice of law or conflict of laws principles. Sparboe Farms only submits to the jurisdiction in the Eastern District of Pennsylvania for the purposes of this Settlement Agreement and the

implementation, enforcement and performance thereof. Sparboe Farms otherwise retains all defenses to the Court's exercise of personal jurisdiction over Sparboe Farms.

34. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and Sparboe Farms (and the other Releasees) pertaining to the settlement of the Action against Sparboe Farms only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Sparboe Farms in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Sparboe Farms, and approved by the Court.

35. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counsel or Plaintiffs' Counsel shall be binding upon all Class Members and Releasors; and (b) each and every covenant and agreement made herein by Releasees shall be binding upon all Releasees.

36. This Agreement may be executed in counterparts by Plaintiffs and Sparboe Farms, and a facsimile signature will be considered as an original signature for purposes of execution of this Agreement.

37. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

38. In the event this Agreement is not approved or is terminated, or in the event that the Order and Final Judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation shall be restored and the Agreement shall have no effect on the rights of the Settling Parties to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to class

certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Sparboe Farms.

39. Neither Sparboe Farms nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

40. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, Sparboe Farms, and Releasees any right or remedy under or by reason of this Agreement.

41. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by facsimile or letter by overnight delivery to:

For the class:

Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
(215) 545-7200
(215) 545-6536 (fax)
asher@wka-law.com

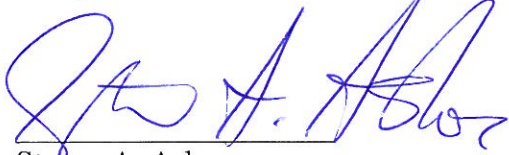
For Sparboe Farms:

Troy J. Hutchinson
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33 South Sixth Street, Suite 4200
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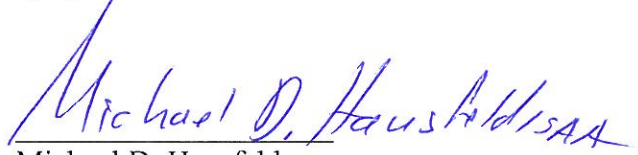
42. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Originally Signed: June 5, 2009

Resigned: June 22, 2009 (to account for edits to Paragraph 11)



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(On Behalf of the class, Plaintiffs, Class Counsel and Plaintiffs' Counsel)

Originally Signed: June 8, 2009

Resigned: June 22, 2009 (to account for edits to Paragraph 11)



Eric A. Bartsch

Troy J. Hutchinson

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(On Behalf of Sparboe Farms, Inc.)

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

MDL No. 2002

THIS DOCUMENT APPLIES TO
ALL DIRECT PURCHASER ACTIONS

Case No. 08-md-02002

AFFIDAVIT OF JENNIFER M. KEOUGH
RE: NOTICE AND SETTLEMENT ADMINISTRATION

STATE OF WASHINGTON)
) ss.:
COUNTY OF KING)

JENNIFER M. KEOUGH, being duly sworn, states:

1. I am Executive Vice President, Operations, of The Garden City Group, Inc. (“GCG”). The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. GCG has been providing comprehensive legal administration services for over 25 years. Our team has served as administrator for well over 1,000 cases. In the course of our history, we have mailed over 227 million notices, handled over 3 million calls, processed over 41 million claims, and distributed over \$22 billion.

AFFIDAVIT OF JENNIFER M. KEOUGH

3. GCG was appointed by the Court in the above-captioned litigation (the “Litigation”) to develop and implement a legal notice program (“Notice Program”) to inform class members of a proposed class action settlement between Plaintiffs and Defendant Sparboe Farms, Inc. (“Sparboe”), as well as the separate proposed class action settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. (“Moark Defendants”).

4. I submit this Affidavit in order to report to the Court and the parties to the Litigation, that, in compliance with the Court’s Order Approving Dissemination of Notice of Settlements Between Direct Purchaser Plaintiffs and (i) Defendant Sparboe Farms, Inc. and (ii) Defendants Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. filed July 15, 2010 (the “Dissemination Order”), all elements of the Notice Program have been successfully implemented. A detailed description of the elements is below.

5. As further discussed below, the Notice Program, through a combination of direct mail, publication, press releases, a website, and a toll-free telephone number, was intended to reach the Class Members defined in the Orders of this Court.¹

¹ As defined both in the Court’s Order on Preliminary Approval of Settlement with Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. filed July 15, 2010 (the “Moark Preliminary Approval Order”), and in the Court’s Order on Preliminary Approval of Sparboe Settlement filed October 23, 2009 (the “Sparboe Preliminary Approval Order”), the Class consists of all persons and entities in the United States that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010 (the “Class Members”). The terms “Class” or “Class Members” do not include: (a) Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates; (b) all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family; (c) purchases of “specialty” Shell Eggs or Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types); and (d) purchases of “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

6. There are five elements to this multifaceted, nationwide program:
- Direct notice by first-class mail to Class Members, which includes the long-form notice of settlement with Sparboe, the long-form notice of settlement with Moark, and the Claim Form (collectively, the “Notice Packet”);
 - Publication of short-form notices (the “Summary Notices”);
 - A press release through PR Newswire;
 - A dedicated website through which Class Members can obtain information concerning the Moark Settlement and the Sparboe Settlement (the “Settlements”); and
 - A toll-free telephone helpline through which Class Members can obtain information concerning the Settlements.

DIRECT MAIL NOTICE

7. Between April 8, 2010 and July 16, 2010, GCG received various electronic data files from the seventeen named egg producer Defendants, and was advised that the files contained the list of potential Class Member names and addresses as specified in Paragraph 3 of the Dissemination Order. On August 25, 2010, GCG received a supplemental data file from one of the Defendants. In total, GCG received 13,900 electronic records from Defendants. These records are maintained in accordance with the confidentiality agreement executed between non-settling Defendants, Direct Purchaser Plaintiffs and GCG.

8. GCG loaded this data into a database created for the Litigation. Prior to mailing the Notice Packet, mailing addresses of potential Class Members were updated using the National Change of Address database (“NCOA”). The NCOA resulted in 98 address updates. Additionally, GCG identified and excluded 490 duplicate records, as well as 208 address records for Defendants (who are excluded by definition from the Settlement Class). GCG formatted the

Notice Packet, and caused it to be printed and personalized with the name and address of each known potential Class Member.

9. Pursuant to Paragraph 4 of the Dissemination Order, GCG posted the Notice Packets for first-class mail, postage pre-paid on September 2, 2010 (the "Notice Date"). On the Notice Date, 13,202 copies of the Notice Packet were mailed via first-class mail. Additionally, on the Notice Date, nine Notice Packets were mailed via overnight mail to the representative counsel for the Class Representatives. A copy of the Notice Packet is attached hereto as Exhibit 1.

NOTICE BY PUBLICATION

10. The publication component of the overall Notice Program served as an enhancement to the direct mail effort to reach Class Members whose (i) names were not available and/or (ii) whose names were available but whose current addresses were unknown. The use of the direct mail outreach process as the predominant, primary method of notice, combined with a reminder or enhancement through publication, is consistent with numerous court-approved notice programs.

11. Pursuant to Paragraph 5 of the Dissemination Order, GCG caused the Summary Notices to be published on September 13, 2010 in *The Wall Street Journal*. Additionally, the Summary Notices were published in a variety of trade magazines that specifically cater to the restaurant and food industries. The Summary Notices published in the following trade magazines: *PetFood Industry* (September 2010 issue), *Restaurant Business* (September 2010 issue), *Convenience Store News* (September 6, 2010 issue), *Hotel F&B* (September / October 2010 issue), *Nation's Restaurant News* (September 6, 2010 issue), *Food Service Director* (September 2010 issue),

Progressive Grocer (September 2010 issue), *Food Manufacturing* (September 2010 issue), *Supermarket News* (September 6, 2010 issue), *Stores* (September 2010 issue), *Egg Industry Magazine* (September 2010 issue), *Modern Baking*² (October 2010 issue), *Baking Buyer* (September 2010 issue), *Food Processing* (September 2010 issue), and *Long Term Living* (September 2010 issue). Combined, these publications have a circulation of over 2,316,000 million. Publication Notice tear sheets from the publications are attached hereto as Exhibit 2.

12. As of the date of this Affidavit, GCG has received 83 Notice Packets returned by the U.S. Postal Service with forwarding address information. Notice Packets returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided. As of the date of this Affidavit, GCG has received 2,329 Notice Packets returned by the U.S. Postal Service without forwarding address information.

PRESS RELEASE

13. Pursuant to Paragraph 6 of the Dissemination Order, GCG coordinated the release of two press releases, one for each proposed settlement, via PR Newswire on September 13, 2010. The releases were distributed over the US1 Newswire and included distribution to almost 1,000 journalists in the Restaurant and Food Industries. The press release resulted in a total of 335

² *Modern Baking* was scheduled to publish the notice in its September issue. However, due to a production error by the magazine, the ad was not published in the September issue. The publisher remediated the error in two ways: first, an email blast was sent to over 28,000 *Modern Baking* email subscribers on September 29, 2010. (There is subscriber overlap in circulation and the email list.) In addition the publisher ran the legal notices in the October 2010 issue of *Modern Baking*. This type of substitution is not an uncommon event in class action notice.

articles reporting the Sparboe and Moark Settlements. Attached as Exhibit 3 is a copy of the media reports for Sparboe and Moark articles.

WEBSITE

14. Pursuant to Paragraph 7 of the Dissemination Order, GCG established and maintains a website dedicated to this Settlement (www.eggproductssettlement.com) to provide additional information to the Class Members and to answer frequently asked questions. Users of the website can download a Notice Packet as well as review the Dissemination Order, Moark Preliminary Approval Order, Sparboe Preliminary Approval Order, Settlement Agreements and other relevant Court documents. The web address is set forth in the Notice Packet. The settlement website has been operational since August 30, 2010, and is accessible 24 hours a day, 7 days a week. As of the date of this Affidavit, the website has received 2,821 visits.

TOLL-FREE TELEPHONE HELPLINE

15. Pursuant to Paragraph 8 of the Dissemination Order, beginning on August 30, 2010, GCG set up and continues to maintain an automated toll-free telephone number (1-866-881-8306), where potential Settlement Class Members can obtain information about the Settlement. This toll-free number is accessible twenty-four hours a day, seven days a week. Class Members who call the toll-free number during business hours have the option to speak directly to a live representative. Class Members who call during non-business hours have the option of leaving a voice message requesting either a Notice Packet or a return call from a call center representative. As of the date of this Affidavit, there have been 328 calls to the automated number. 61 callers requested and received a Notice Packet mailing or a returned call. GCG has and will continue to expeditiously handle Class Member inquiries.

AFFIDAVIT OF JENNIFER M. KEOUGH

CLAIM SUBMISSIONS

16. Pursuant to Paragraph 15 of the Dissemination Order, Class Members who wish to file a claim are required to submit a complete Claim Form to GCG via mail postmarked no later than January 7, 2011. As of the date of this Affidavit, GCG has received 167 timely Claim Forms.

OBJECTIONS AND EXCLUSIONS

17. Pursuant to Paragraph 12 and Paragraph 13 of the Dissemination Order, any Class Member who wished to be excluded from the Moark Settlement and/or the Sparboe Settlement was required to submit their exclusion request to GCG on or before November 16, 2010. As of the date of this Affidavit, GCG has received 364 exclusion requests from Class Members. 142 Class Members requested exclusion from both the Moark Settlement and the Sparboe Settlement. 222 Class Members requested exclusion solely from the Sparboe Settlement. Many of those who requested exclusion appear to be related entities with similar names and shared counsel. Of the entities who have requested exclusion, there are, for example, 29 "Price Chopper" entities, 14 "Unilever" entities, 14 "Associated/Assoc Wholesale" entities, 13 "Winn-Dixie" entities, 11 "Kraft" entities, and 10 "C&S" entities.

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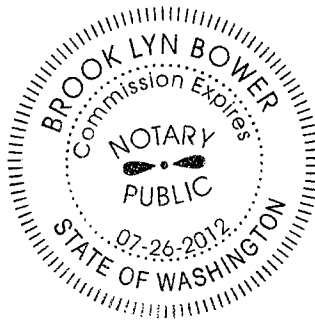
18. Pursuant to Paragraph 10 and Paragraph 11 of the Dissemination Order, any Class Member who wished to object to the approval of the Moark Settlement or the Sparboe Settlement was required to inform the Court and the Parties of their intent, on or before November 16, 2010. As of the date of this Affidavit, GCG has not received any objections from Class Members.


JENNIFER M. KEOUGH

Sworn to before me this
14th day of December 2010



Notary Public



AFFIDAVIT OF JENNIFER M. KEOUGH

Exhibit 1

**MUST BE
POSTMARKED OR
DELIVERED BY
JANUARY 7, 2011**

**In re Processed Egg Products Antitrust Litigation
c/o The Garden City Group, Inc.
P.O. Box 9476
Dublin, OH 43017-4576
Toll-Free: 1 (866) 881-8306**

EGS



Claim No:

Control No:

<u>REQUIRED ADDRESS INFORMATION OR CORRECTIONS</u>	
If the pre-printed address to the left is incorrect or out of date, OR if there is no pre-printed data to the left, YOU MUST provide your current name and address here:	
Name:	<input type="text"/>
Address:	<input type="text"/>
City/State/Zip:	<input type="text"/>

CLAIM FORM

If you are a member of one or both of the Settlement subclasses defined below ("Claimant"), you must submit a timely and valid Claim Form by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,¹ January 7, 2011 for your claim to be considered for payment. Claim Forms should be mailed by first-class mail to the Claims Administrator at the following address:

**In re Processed Egg Products Antitrust Litigation
c/o The Garden City Group, Inc.
P.O. Box 9476
Dublin, OH 43017-4576**

GENERAL INSTRUCTIONS

This Claim Form relates to a settlement ("Moark Settlement") with Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively, the "Moark Defendants") in the lawsuit *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania.

The Moark Settlement is for the benefit of **direct** egg purchasers only, that is, entities or individuals in the United States who bought eggs directly from egg producers, and not those who purchased eggs indirectly such as from wholesalers, distributors, or retailers. To be eligible to share in the Moark Settlement, you must have purchased eggs, including Shell Eggs and Egg Products (the whole or any part of eggs that have been removed from their shells and may be processed, with or without additives, into dried, frozen or liquid forms), produced from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010.

The producer Defendants in this case include: Michael Foods, Inc.; Land O'Lakes, Inc.; Moark, LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; R.W. Sauder, Inc.; and Sparboe Farms, Inc. You need not have purchased from one of these entities to make a claim. If you have a question about whether your purchases would qualify, please contact the Claims Administrator.

¹ To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.



The Settlement Class consists of two subclasses. You may belong to one or both subclasses.

A. Shell Egg Subclass

All individuals and entities in the United States that purchased Shell Eggs produced from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010. Excluded from the subclass are purchases of "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

B. Egg Products Subclass

All individuals and entities in the United States that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010. Excluded from the subclass are purchases of "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, or vegetarian-fed types).

Excluded from the Class and Subclasses are producers of Shell Eggs and/or Egg Products, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

Each corporation, trust or other business entity making a claim must submit its claim on a separate Claim Form. Please carefully review each page of the Claim Form. Only complete and valid Claim Forms will be accepted. Do not submit duplicate claims.

CLAIMANT INFORMATION

Claimant type (check one): Individual Corporation Estate
 Trustee in Bankruptcy Other (Specify) _____

Claimant Name: _____

Representative or Contact Name: _____

Representative or Contact Title: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone Number:(_____) _____ Email Address: _____



SHELL EGG SUBCLASS PURCHASES

Complete this section only if you are a member of the Shell Egg Subclass as defined on page 2.

- List below the yearly totals of your Shell Egg purchases made directly from Moark, LLC/Norco Ranch, Inc./Land O' Lakes, Inc. from January 1, 2000 through July 15, 2010.
- Separately list below the yearly totals of your Shell Egg purchases made directly from any other Shell Egg producer in the United States from January 1, 2000 through July 15, 2010, regardless of whether they are a Defendant in this action or not.
- Shell Eggs include both "table eggs" (generally purchased by retail entities for resale to the consuming public) and "breaking eggs" (generally purchased by food service entities for further processing).
- The yearly totals must be in U.S. dollars, and reflect the net amount paid after deducting any discounts, rebates, taxes, freight charges and delivery charges.
- If purchase records are available to allow you to calculate and document the sum amount of Shell Egg purchases, you must base your claim on those records. If records are **not** available, then you may submit purchase information based on estimates. Any purchase information based on estimates must include an adequate explanation as to why purchase documents are not available and why estimates are reasonable.
- You may attach additional sheets if needed.

Shell Egg Purchases:

PRODUCER	YEAR	TOTAL QUANTITY PURCHASED (List Purchase Totals by Year)	TOTAL COST
Moark, LLC / Norco Ranch, Inc. / Land O'Lakes, Inc.			
Moark, LLC / Norco Ranch, Inc. / Land O'Lakes, Inc.			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			

Shell Egg Proof of Purchase

Identify and list the records (e.g., invoices, purchase journals, accounts payable, etc.) used to calculate your claimed purchases. If you based your claims on estimates, list and identify all records used as the basis for your estimates. If you are using sales data and trends to estimate purchases, you must explain in detail your calculations and retain the documentation used for your calculations until the conclusion of this litigation.

All claims are subject to audit by the Claims Administrator. Incomplete, invalid, or fraudulent claims will be denied. You may be required to provide all underlying documentation supporting your claim at a later time. **Please retain all documents supporting your claim until the conclusion of this litigation.**

Attach copies of a minimum of two documents used to calculate purchase costs for each producer.

Proof of Purchase documents attached? Yes No Reason: _____



EGG PRODUCTS SUBCLASS PURCHASES

Complete this section only if you are a member of the Egg Products Subclass as defined on page 2.

- List below the yearly totals of your Egg Product purchases made directly from Moark, LLC/Norco Ranch, Inc./Land O’ Lakes, Inc. from January 1, 2000 through July 15, 2010.
- Separately list below the yearly totals of your Egg Product purchases made directly from any other Egg Products producer in the United States from January 1, 2000 through July 15, 2010, regardless of whether they are a Defendant in this action or not.
- Egg Products are “breaking eggs” that have been removed from their shells and processed into dried, frozen or liquid forms.
- The yearly totals must be in U.S. dollars, and reflect the net amount paid after deducting any discounts, rebates, taxes, freight charges and delivery charges.
- If purchase records are available to allow you to calculate and document the sum amount of Egg Product purchases, you must base your claim on those records. If records are **not** available, then you may submit purchase information based on estimates. Any purchase information based on estimates must include an adequate explanation as to why purchase documents are not available and why estimates are reasonable.
- You may attach additional sheets if needed.

Egg Product Purchases:

PRODUCER	YEAR	TOTAL QUANTITY PURCHASED (List Purchase Totals by Year)	TOTAL COST
Moark, LLC / Norco Ranch, Inc. / Land O’Lakes, Inc.			
Moark, LLC / Norco Ranch, Inc. / Land O’Lakes, Inc.			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			

Egg Products Proof of Purchase

Identify and list the records (e.g., invoices, purchase journals, accounts payable, etc.) used to calculate your claimed purchases. If you based your claims on estimates, list and identify all records used as the basis for your estimates. If you are using sales data and trends to estimate purchases, you must explain in detail your calculations and retain the documentation used for your calculations until the conclusion of this litigation.

All claims are subject to audit by the Claims Administrator. Incomplete, invalid, or fraudulent claims will be denied. You may be required to provide all underlying documentation supporting your claim at a later time. **Please retain all documents supporting your claim until the conclusion of this litigation.**

Attach copies of a minimum of two documents used to calculate purchase costs for each producer.

Proof of Purchase documents attached? Yes No Reason: _____



SUBMISSION TO JURISDICTION OF THE DISTRICT COURT

This Claim Form is submitted on behalf of the Claimant under the terms of the Settlement Agreement in the Action described in the Notice. You hereby affirm that you are a member of the Class or the transferee or assignee of, or the successor to, the claims of a Class Member. You hereby submit to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania with respect to its claim to participate in the Class and for the purposes of enforcing the release set forth herein. You further acknowledge that you are bound by and subject to the terms of any orders or judgments that may be entered by the Court in the Action with respect to the settlement of the claims of the Class against the Moark Defendants, as described in the accompanying Notice. You agree to furnish additional information to the settlement Claims Administrator to support this claim if required to do so.

RELEASE

If the Settlement Agreement is approved by the Court in accordance with its terms, you ("Claimant") will release the Released Claims described below that you may have against the Moark Defendants. If you do not submit a Claim Form, but do not elect to exclude yourself from the Class, you will nonetheless be releasing the Released Claims.

The Moark Defendants shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Claimant ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a Defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, from the beginning of time to July 15, 2010 (the "Released Claims"). Claimant shall not, after the date of this Agreement, seek to recover against any of the Moark Defendants for any of the Released Claims.

Each Claimant waives California Civil Code Section 1542 and similar provisions in other states. Each Claimant hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.

Each Claimant may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Claimant hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

In addition to the above, each Claimant hereby expressly and irrevocably waives and releases, upon this Settlement Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Claimant may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained above. Each Claimant also expressly and irrevocably waives any and all defenses, rights, and benefits that the Claimant may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge (1) claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases and (2) claims relating to payment disputes, physical harm, defective product or bodily injury (collectively, the "Excepted Claims").



SUBSTITUTE IRS FORM W-9

Substitute IRS Form W-9

Enter the claimant's federal taxpayer identification number:

_____ - _____ - _____ OR _____ - _____ - _____

Social Security Number (for individuals) Employer Identification Number (for corporations, trusts, etc.)

Print claimant name:

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is the taxpayer identification number of named claimant, **and**
2. Claimant is not subject to backup withholding because: (a) claimant is exempt from backup withholding, or (b) claimant has not been notified by the Internal Revenue Service (IRS) that claimant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified claimant that claimant is no longer subject to backup withholding.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

CERTIFICATION

I hereby certify under penalty of perjury that:

1. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information and belief;
2. I am authorized to submit this Claim Form on behalf of the Claimant;
3. I have documentation to support my claim and agree to provide additional information to the Claims Administrator to support my claim if necessary, OR, if I do not have documentation, I have explained why purchase documents are not available and why estimates are reasonable;
4. I am either (a) a member of the Settlement Class and did not request to be excluded from the Settlement Class or (b) the assignee or transferee of, or the successor to, the claim of a member of the Settlement Class and did not request to be excluded from the Settlement Class;
5. I am neither a Defendant, nor a parent, employee, subsidiary, affiliate or co-conspirator of a Defendant;
6. I am not a government entity;
7. I am not a member of the Court or staff to whom this case is assigned or a member of the Court's or staff's immediate family;
8. I have not assigned or transferred (or purported to assign or transfer) or submitted any other claim for the same purchases of Shell Eggs and/or Egg Products and have not authorized any person or entity to do so on my behalf; and
9. I have read and, by signing below, agree to all of the terms and conditions set forth in this Claim Form.

I declare under penalty of perjury under the laws of the United States of America that the information provided in this Claim Form is true and correct. This Certification was executed on the _____ day of _____ in 201__ in _____ (city, state, country).

Signature

Title or Position (if applicable)

Print Name



REMINDER CHECKLIST

- Please confirm all required information is provided including Claimant Information and Purchase Information.
- Substitute W-9 Form must be complete.
- Certification must be signed.
- All claims must include a minimum of two supporting documents as Proof of Purchase for each producer claimed.
- Keep a copy of your Claim Form and supporting documents for your reference.
- The receipt of a Claim Form is not automatically confirmed by the Claims Administrator. If you wish to have confirmation that your submission was received you may choose to mail your Claim Form by U.S. Postal Service Certified Mail, return receipt requested.
- If your address changes after submitting your Claim Form, advise the Claims Administrator of your new address in writing.
- If you need additional information, you may contact the Claims Administrator toll free at 1-866-881-8306. Additional information and copies of Court documents are available on the Settlement website, www.eggproductssettlement.com.

**All Claim Forms must be sent by first-class mail postmarked by,
or pre-paid delivery service to be hand-delivered by² January 7, 2011 to:**

In re Processed Egg Products Antitrust Litigation
c/o The Garden City Group, Inc.
P.O. Box 9476
Dublin, OH 43017-4576

²To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010, you could be a Class member in a proposed class action settlement.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark Defendants"). If you fall within the definition of the "Settlement Class" as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with the Moark Defendants (the "Moark Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Settlement Class or to exclude yourself from the Settlement Class.

These rights and options, and the deadlines to exercise them, are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
TAKE NO ACTION	You will receive the non-monetary benefits of the Moark Settlement and give up the right to sue the Moark Defendants with respect to the claims asserted in this case. You may be eligible to receive a payment from the Moark Settlement <i>if</i> you submit a timely Claim Form (by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011). You will give up the right to sue Moark.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	This is the only option that allows you to ever be a part of any other lawsuit against the Moark Defendants with respect to the claims asserted in this case. You will not become a member of the Class. If you exclude yourself, you will be able to bring a separate lawsuit against Moark with respect to the claims asserted in this case.
OBJECT TO THE SETTLEMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	You will remain a member of the Class, but you also have the right to comment on the terms of the Moark Settlement.
GO TO THE HEARING ON FEBRUARY 28, 2011 AFTER FILING A TIMELY OBJECTION	If you file a timely objection, you may speak in Court about the fairness of the Moark Settlement.
SUBMIT A CLAIM FORM BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, JANUARY 7, 2011	This is the only way to receive a payment from the Moark Settlement.

1. Why did I receive this notice?

This legal notice is to inform you of the Moark Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the Defendants in the lawsuit.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited, fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.¹ Soon thereafter, Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe") commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on April 7, 2010.

After an exchange of relevant sales data, Plaintiffs and the Moark Defendants entered into settlement discussions in March of 2010. After extensive and arm's-length negotiations, on May 21, 2010, Plaintiffs and the Moark Defendants reached a settlement.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, Defendants caused prices to be higher than they otherwise would have been. The Moark Defendants and the other Defendants deny all of Plaintiffs' allegations.

3. Who is included in the Settlement?

Plaintiffs and the Moark Defendants have agreed that, for purposes of the Moark Settlement, the Settlement Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010.

¹ This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser buys eggs from a direct purchaser of eggs or another indirect purchaser.

Persons or entities that fall within the definition of the Settlement Class and do not exclude themselves will be bound by the results of this litigation.²

4. What does the Moark Settlement provide?

After several months of extensive settlement discussions, Plaintiffs and the Moark Defendants reached a Settlement on May 21, 2010. The Moark Settlement is between Plaintiffs and the Moark Defendants only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Pursuant to the terms of the Moark Settlement, Plaintiffs will release the Moark Defendants from all pending claims. In exchange, the Moark Defendants have agreed to pay \$25,000,000 to a fund to compensate Class members and to provide substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which will provide important information in support of Plaintiffs' claims against the non-settling Defendants and possibly others who participated in the alleged conspiracy. (If Class members whose combined purchases account for 7.5% or more of total sales for egg producers in the U.S. choose to exclude themselves from the Settlement Agreement, the Moark Defendants have the right to terminate the Settlement.) It is the opinion of Plaintiffs' attorneys that the Moark Defendants' cooperation will provide significant benefits to members of the Settlement Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling Defendants.

On July 15, 2010, the Court granted preliminary approval of the Moark Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Settlement Class.

The Moark Settlement should not be taken as an admission by the Moark Defendants of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Moark Settlement to all members of the Settlement Class who can be identified through reasonable effort.

5. How will the Settlement Fund be distributed?

The \$25 million paid by the Moark Defendants may be reduced by court-ordered attorneys' fees and reimbursement of litigation expenses, including administration of the Settlement, as approved by the Court. The Settlement Fund will also be reduced by the expense of providing notice to the Class. If Class members whose sales equal 7.5% or more of the total U.S. egg sales choose to exclude themselves from the Class, the Settlement Fund also may be reduced by an amount equal to the total purchases of excluded Class members divided by total U.S. egg sales times the settlement amount. The remainder of the Moark Settlement will be distributed on a *pro rata* basis among the members of the Class who timely and properly submit a valid Claim Form. Your *pro rata* share will be based on the dollar amount of your direct purchases of eggs and egg products in the United States. The Court retains the power to approve or reject, in part or in full, any individual claim of a Class member based on equitable grounds. Because the alleged overcharge is only a portion of the price paid for eggs and egg products, your recovery will be less than the total amount you paid.

6. How do I file a Claim Form?

The Claim Form and instructions for filing a proof of claim are included with the Claim Form provided with this Notice. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011, to be considered for distribution.

You should carefully read the descriptions of the respective classes set forth earlier in this Notice to verify that you are a Class member. Next, you should review your records and confirm that you purchased the

² The Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." Excluded from the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the subclasses are purchases of "specialty" Shell Eggs or Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

relevant product(s) during the relevant time period. Then, included with this Notice, you will find a Claim Form which must be completed by the Class member and returned to the address indicated on the Claim Form. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011. **Any Class member who does not complete and timely return the Claim Form will not be entitled to share in the Moark Settlement.**

Where records are available to calculate and document the dollar amount of your relevant purchases, you must use those records to complete the Claim Form.

Where adequate records are not available to calculate your purchases to be listed on the Claim Form, you may submit purchase information based on verifiable estimates as directed in the Claim Form.

7. How will the lawyers be paid?

These attorneys and their respective firms are referred to as Class Counsel. Class Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and for reimbursement of litigation costs and expenses incurred, including fees and costs expended while providing Notice to the Class and while administering the Settlement Fund (including the plan of allocation).

Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award of attorneys' fees in an amount not to exceed thirty percent of \$25 million as well as the costs and expenses incurred. To date, Class Counsel have not been paid any attorneys' fees. Any attorneys' fees and reimbursement of costs will be awarded only as approved by the Court in amounts determined to be fair and reasonable.

8. What is the effect of the Court's final approval of the Moark Settlement?

If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Settlement Class. By remaining part of the Moark Settlement, if approved, you will give up any claims against the Moark Defendants relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Moark Settlement, you will retain all claims against all other Defendants, named and unnamed.

9. Who represents the Settlement Class?

The Settlement Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, NY 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, NY 10065

10. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court has scheduled a "Fairness Hearing" at 1:30 p.m. on February 28, 2011 at the following address:

United States District Court
 James A. Byrne Federal Courthouse
 601 Market Street
 Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Moark Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to

attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check www.eggproductssettlement.com for any updates.

11. How do I object?

If you are a Settlement Class member and you wish to participate in the Moark Settlement, but you object to or otherwise want to comment on any term of the Moark Settlement (including the request for attorneys' fees), you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, November 16, 2010 to each of the following:

The Court:

United States District Court
James A. Byrne Federal Courthouse
601 Market Street
Office of the Clerk of the Court, Room 2609
Philadelphia, PA 19106-1797

Counsel for Plaintiffs:

Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103

Counsel for the Moark Defendants:

Nathan P. Eimer
EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604

Your objection must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a Settlement Class member, you have the right to voice your objection to the Moark Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

12. How do I exclude myself from the Settlement?

If you are a Settlement Class member and you do not wish to participate in the Moark Settlement, the Court will exclude you from the Moark Settlement if you request exclusion. Your request for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,³ November 16, 2010 to the following address:

In re Processed Egg Products Antitrust Litigation– EXCLUSIONS
c/o The Garden City Group, Inc., Claims Administrator
P.O. Box 9476
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from the Moark Settlement. Do not request exclusion if you wish to participate in the Moark Settlement as a member of the Settlement Class. If you intend to bring your own lawsuit against the Moark Defendants, you should exclude yourself from the Settlement Class.

³ To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: *In re Processed Egg Products Antitrust Litigation* (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

If you remain in the Class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

13. What happens if I do nothing?

If you do nothing, you will remain a member of the Class. As a member of the Settlement Class, you will be represented by the law firms listed above in Question No. 9, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court from some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

However, you must submit a timely Claim Form (see Question No. 6) in order to be considered for any monetary benefit from the Settlement Fund.

14. Where do I get additional information?

For more detailed information concerning matters relating to the Moark Settlement, you may wish to review the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (signed May 21, 2010) and the "Order on Preliminary Approval of Settlement with Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (entered July 15, 2010). These documents are available on the settlement website, www.eggproductssettlement.com, which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 10. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

Dated: July 15, 2010

The Honorable Gene E. K. Pratter

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010, you could be a Class member in a proposed class action settlement.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendant Sparboe Farms, Inc. ("Sparboe"). If you fall within the definition of the "Class" as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with Sparboe (the "Sparboe Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Class or to exclude yourself from the Class.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
TAKE NO ACTION	You will receive the benefits of the Sparboe Settlement and give up the right to sue Sparboe with respect to the claims asserted in this case.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	This is the only option that allows you to ever be a part of any other lawsuit against Sparboe with respect to the claims asserted in this case.
OBJECT TO THE SETTLEMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	Write to the Court and explain why you do not like the Sparboe Settlement.
GO TO THE HEARING ON JANUARY 13, 2011 AFTER FILING A TIMELY OBJECTION.	Speak in Court about the fairness of the Sparboe Settlement.

These rights and options, and the deadlines to exercise them, are explained in this notice.

1. Why did I receive this notice?

This legal notice is to inform you of the Sparboe Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the Defendants in the lawsuit.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, certain producers of eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this conspiracy to limit supply raised the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.¹

¹ This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser buys eggs from a direct purchaser of eggs or another indirect purchaser. The Sparboe Settlement does not affect your rights, if any, as an indirect egg purchaser.

Soon thereafter, Plaintiffs and Sparboe commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on April 7, 2010 against the following nineteen named Defendants: United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O'Lakes, Inc.; Moark, LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of PA, Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; and R.W. Sauder, Inc. Further, Plaintiffs' attorneys believe that there are more individuals and entities that have conspired to raise the price of eggs.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the Class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. Plaintiffs allege that these methods include, but are not limited to, specific restrictions on the number of hens, a pretextual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs outside the U.S. in order to remove eggs from domestic supply even though producers could charge more domestically for those eggs, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs further allege that eggs are unique in that there is no substitute; as such, demand remains constant regardless of price. Plaintiffs allege that a reduction in supply would therefore cause prices to rise, and producers' profits would increase substantially. Sparboe and the other Defendants deny all of Plaintiffs' allegations.

3. Who is included in the Settlement?

Plaintiffs and Sparboe have agreed that, for purposes of the Sparboe Settlement, the Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010.

Persons or entities that fall within the definition of the Class and do not exclude themselves from it will be bound by the results of this litigation.²

4. What does the Sparboe Settlement provide?

After several months of extensive settlement discussions, Plaintiffs and Sparboe reached a Settlement on June 8, 2009. The Sparboe Settlement is between Plaintiffs and Defendant Sparboe only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Pursuant to the terms of the Sparboe Settlement, Plaintiffs will release Sparboe from all claims arising from the facts in Plaintiffs' complaint. In exchange, Sparboe has agreed to substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which Plaintiffs believe will provide important information in support of Plaintiffs' claims against the non-settling Defendants and possibly others who participated in the alleged conspiracy. It is the opinion of Plaintiffs' attorneys that this cooperation will provide significant benefits to members of the Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling Defendants. For instance, through Sparboe's cooperation, Plaintiffs have already learned more details about the alleged conspiracy. Plaintiffs have included these details in the second amended consolidated complaint filed on April 7, 2010. Further, because it was not known whether the opportunity to secure a Defendant's cooperation would be available indefinitely, prompt settlement was important. The Sparboe Settlement is based entirely on cooperation; there is no financial compensation component to the Sparboe Settlement.

On October 23, 2009, the Court granted preliminary approval of the Sparboe Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Class. The Court found that the Sparboe Settlement appears to require substantial cooperation from Sparboe, including the production of critical documents and witnesses that are expected to materially assist Plaintiffs in prosecuting their claims against the non-settling Defendants. The Court also found that the

² The Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." Excluded from the Class and the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the Class and the subclasses are purchases of "specialty" Shell Eggs or Egg Products (such as "organic," "free-range," or "cage-free"), as well as purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

benefit of the information to be supplied by Sparboe appears to outweigh the potential benefit of Sparboe's continued participation in the lawsuit.

The Sparboe Settlement should not be taken as an admission by Sparboe of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Sparboe Settlement to all members of the Class who can be identified through reasonable effort.

5. What is the effect of the Court's final approval of the Sparboe Settlement?

If the Court grants final approval, the Sparboe Settlement will be binding upon you and all other members of the Class. By remaining part of the Sparboe Settlement, if approved, you will give up any claims against Sparboe relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Sparboe Settlement, you will retain all claims against all other Defendants, named and unnamed.

6. Who represents the Class?

The Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, NY 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, NY 10065

7. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court has scheduled a "Fairness Hearing" at 1:30 p.m. on January 13, 2011 at the following address:

United States District Court
James A. Byrne Federal Courthouse
601 Market Street
Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Sparboe Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check www.eggproductssettlement.com for any updates.

8. How do I object to the Sparboe Settlement?

If you are a Class member and you wish to participate in the Sparboe Settlement, but you object to or otherwise want to comment on any term of the Sparboe Settlement, you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, November 16, 2010 to each of the following:

The Court:
United States District Court
James A. Byrne Federal Courthouse
601 Market Street
Office of the Clerk of the Court, Room 2609
Philadelphia, PA 19106-1797

Counsel for Plaintiffs:
Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103

Counsel for Sparboe:
Troy J. Hutchinson
STOEL RIVES LLP
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402

Your objection must be in writing and must provide evidence of your membership in the Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's

attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are an objecting Class member, you have the right to voice your objection to the Sparboe Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

9. How do I exclude myself from the Settlement?

If you are a Class member and you do not wish to participate in the Sparboe Settlement, the Court will exclude you from the Sparboe Settlement if you request exclusion. Your request for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,³ November 16, 2010 to the following address:

In re Processed Egg Products Antitrust Litigation – EXCLUSIONS
c/o The Garden City Group, Inc., Claims Administrator
P.O. Box 9476
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from the Sparboe Settlement. Do not request exclusion if you wish to participate in the Sparboe Settlement as a member of the Class. If you intend to bring your own lawsuit against Sparboe, you should exclude yourself from the Class.

10. What happens if I do nothing?

If you do nothing, you will remain a member of the Class. As a member of the Class, you will be represented by the law firms listed above in Question No. 6, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court, in some portion of whatever money they may ultimately recover for you and other members of the Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. Where do I get additional information?

For more detailed information concerning matters relating to the Sparboe Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 22, 2009) and the "Order on Preliminary Approval of Sparboe Settlement" (entered October 23, 2009). These documents are available on the Sparboe Settlement website, www.eggproductssettlement.com, which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 7. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline in order to provide your new address.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

Dated: July 15, 2010

The Honorable Gene E. K. Pratter

³ To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

**EXHIBITS 2 and 3 to EXHIBIT B
(KEOGH DECLARATION)
ARE AVAILABLE IN HARD COPY
AT THE CLERK'S OFFICE**

EXHIBIT C

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	MDL No. 2002
	:	08-md-02002
	:	
THIS DOCUMENT APPLIES TO:	:	
All Direct Purchaser Actions	:	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL
OF PROPOSED SETTLEMENT WITH SPARBOE FARMS, INC.**

It is hereby ORDERED AND DECREED as follows:

(1) The motion of Direct Purchaser Plaintiffs (“Plaintiffs”) for final approval of the proposed settlement with Defendant Sparboe Farms, Inc. (“Sparboe”), which Sparboe does not oppose, is hereby GRANTED.

(2) On the basis of the entire record before the Court, including a full fairness hearing, the Court finds that the proposed settlement is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Shell Eggs Subclass

All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Egg Products Subclass

All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.

Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family. Also excluded from the Class and Subclasses

are purchases of “specialty” shell egg or egg products (such as “organic,” “free-range” or “cage-free”) and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

(3) Specifically, the Court finds that the settlement is entitled to an initial presumption of fairness because the settlement negotiations were undertaken at arm’s-length over a four-month period, by experienced antitrust counsel who entered the negotiations with sufficient background in the facts of the case, and no members of the Settlement Class have objected to the proposed settlement. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001). Moreover, the settlement is fair, reasonable and adequate based upon satisfaction of the factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975). Specifically, the settlement is fair, reasonable and adequate given the complexity, expense, and likely duration of the litigation, the stage of proceedings and the costs and risks involved in the litigation for Plaintiffs absent Sparboe’s cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is greatly enhanced by Sparboe’s cooperation and the reaction of the class has been overwhelmingly positive, with no objections to the settlement received.

(4) For the reasons set forth in the Court’s October 23, 2009 Order (Dkt. No. 214), for purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Classes are so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court finds that Federal Rule of Civil Procedure 23(b)(3) is also met, that there are questions of law or fact

common to class members which predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The Court makes no determination, in accordance with *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527-530 (3d Cir. 2004), concerning the manageability of this action as a class action if the matter were to go to trial.

(5) Sparboe is hereby ORDERED to issue notice to the relevant authorities pursuant to its obligations under the Class Action Fairness Act, 18 U.S.C. § 1711 *et seq* (“CAFA”) no later than five (5) business days from the entry of this Order. This Order will become final if no objections or requests for hearings have been made within 90-days from the date on which the CAFA notice is issued. Sparboe is further ORDERED to provide to this Court within five (5) business days of the issuance of the CAFA notice a Declaration detailing the date on which such notice was provided and the methods used to provide such notice.

BY THE COURT:

GENE E.K. PRATTER
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2010, a copy of Direct Purchaser Plaintiffs' Motion for Final Approval of Class Action Settlement and supporting papers were filed with the Clerk of the Court, per the Local Rules, and will be available for viewing and downloading via the CM/ECF system and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the document was also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List and (2) the below-listed Liaison Counsel for Defendants and Indirect Purchaser Plaintiffs:

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Indirect Purchaser Plaintiffs' Liaison Counsel

Date: December 14, 2010

BY: /s/ Mindee J. Reuben

WEINSTEIN KITCHENOFF & ASHER LLC
Attorney for Direct Purchaser Plaintiffs
And Direct Purchaser Plaintiffs' Liaison
Counsel